United Nations A/66/598

General Assembly

Distr.: General
9 December 2011

Original: English

Sixty-sixth session
Agenda item 54
Comprehensive review of the whole question of peacekeeping operations in all their aspects

Comprehensive report on all processes involved in the investigation and prosecution of crimes committed against deployed United Nations peacekeepers

Report of the Secretary-General

I. Introduction

1. The present report, submitted pursuant to the request of the Special Committee on Peacekeeping Operations contained in its report on its substantive session of 2011 (A/65/19), supplements the report of the Secretary-General on the prosecution of crimes against deployed peacekeepers (A/65/700), which was submitted pursuant to the request made by the Special Committee at its substantive session of 2010 (A/64/19). In paragraph 41 of its report on its substantive session of 2011, the Special Committee requested the Secretary-General to prepare and submit, by the end of November 2011, a further comprehensive report on all processes involved in the investigation and prosecution of crimes committed against deployed United Nations peacekeepers. The Special Committee indicated that the report should encompass, inter alia, the legal rights of the troop- and police-contributing countries and the procedures for their participation in all the processes of the investigation of crimes, and acts of serious misconduct committed against their nationals deployed as United Nations peacekeepers, and include advice on the feasibility of adapting the United Nations investigative mechanism, as provided for in a revised model memorandum of understanding whose possible United Nations-wide application had been endorsed by the General Assembly in resolution 61/267 B, with respect to such crimes.

2. The present report contains information on the following: (a) the legal and jurisdictional framework for the investigation and prosecution of crimes against peacekeepers; (b) the practice of the Organization with regard to cooperation with the States concerned in the investigation and prosecution of such crimes; (c) the investigative procedures set out in the revised model memorandum of understanding (see A/C.5/63/18, chap. 9); and (d) a comparative summary of investigations

11-63123 (E) 281211

Please recycle

conducted under the revised model memorandum of understanding of crimes committed against and by peacekeepers.

II. Legal framework for the investigation and prosecution of crimes against peacekeepers

A. Jurisdiction of the host Government

3. Under international law, States hosting United Nations peacekeepers have the right and the obligation to investigate and prosecute crimes committed within their territories against peacekeepers. The United Nations does not have the legal capacity to institute criminal investigations into such incidents.

4. In addition, the Convention on the Safety of United Nations and Associated Personnel of 1994 requires States parties to the Convention to pass legislation that criminalizes attacks on peacekeepers and provides for the prosecution and punishment of such attacks.

5. Pursuant to article 9 of the Convention, States parties are required to establish the following as crimes under their national laws, when committed intentionally, and to make such crimes punishable by appropriate penalties, taking into account their grave nature:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such act;

(e) Any act constituting participation as an accomplice in any such attack, or in organizing or ordering others to commit such attack.

6. Pursuant to article 10 of the Convention, each State party is required to establish its jurisdiction over the crimes set out in article 9 when the crime is committed in its territory or on board a ship or aircraft registered in that State, or when the alleged offender is a national of that State. Moreover, article 10 provides that a State party may establish jurisdiction over the crimes set out in article 9 when it is committed by a stateless person whose habitual residence is in that State, with respect to a national of that State or in an attempt to compel that State to do or to abstain from doing any act.

7. As noted in the report of the Secretary-General on the prosecution of crimes against deployed peacekeepers (A/65/700, para. 4), the provisions of articles 9 and 10 of the Convention are now routinely incorporated into status-of-forces or status-of-mission agreements concluded by the United Nations with countries in which peacekeepers are deployed. In addition, those agreements require the host Government to prosecute perpetrators of the acts mentioned in article 9 of the Convention that are within its jurisdiction, unless it decides to extradite them to

another State for prosecution. Consistent with paragraph 45 of the model status-of-forces agreement (A/45/594), the host country is required to prosecute persons accused of acts in relation to a peacekeeping operation or its members which, if committed against the host country's forces, would be liable to prosecution.

B. Jurisdiction of the International Criminal Court

8. Grave attacks against peacekeepers may constitute war crimes under the Rome Statute of the International Criminal Court whether they take place during an armed conflict of an international character (see article 8 (2) (b) (iii)) or during an armed conflict not of an international character (see article 8 (2) (e) (iii)). As already noted (A/65/700, para. 5), while States parties to the Rome Statute have primary jurisdiction to investigate and prosecute such war crimes, the International Criminal Court may investigate or prosecute such crimes where the State concerned is unwilling or genuinely unable to do so, provided that the conditions for the exercise of its jurisdiction are met.

C. Jurisdiction of States whose nationals are peacekeepers who have been the victims of crimes

9. Some police- and troop-contributing countries may have extraterritorial jurisdiction pursuant to their national laws over certain crimes committed against their peacekeeping personnel. Moreover, some police- and troop-contributing countries may have bilateral arrangements to facilitate cooperation with the host country in the investigation and prosecution of crimes. In addition, the country that has contributed police officers or troops may have an extradition treaty with the host country, pursuant to which a person committing a crime against a peacekeeper may be extradited to the peacekeeper's State of nationality for prosecution.

10. The exercise of jurisdiction by the State of which the peacekeeper is a national, and any cooperation between that State and the host State are entirely within the purview of that State and may be subject to whatever arrangements it makes with the host State. The United Nations, for its part, provides whatever relevant information it may have in its possession to facilitate the investigations conducted by the State of nationality or the host State, as the case may be.

III. Current procedures for the investigation and prosecution of crimes against peacekeepers

A. Preliminary fact-finding or internal administrative investigations by the United Nations

11. In most cases, crimes committed against peacekeepers will, depending on the seriousness of the particular incident, be subject to an internal United Nations

investigation, including, in some cases, the establishment of a board of inquiry.[1] This is because such incidents may have administrative, financial, operational or policy implications for the United Nations, and therefore need to be investigated independently of the fact that they may also constitute criminal offences. Such internal inquiries by the United Nations do not follow the prescriptions of criminal laws. In particular, boards of inquiry are prohibited from addressing issues of legal liability. Thus, in conducting its internal investigations, the United Nations is careful to avoid actions that might be prejudicial to any criminal investigation related to a specific incident.

12. While the United Nations investigation is not a criminal investigation, it may uncover information or evidence that may be of value for the purpose of criminal proceedings. Such information or items may therefore be preserved and, as appropriate, shared with the authorities conducting a criminal investigation, and may be produced in the course of court proceedings. The provision of reports on internal United Nations investigations or other evidence in the possession of the Organization is subject to certain conditions and considerations, including privileges and immunities, confidentiality obligations and safety and security.

13. United Nations internal investigations may help identify witnesses whose knowledge of the facts of an incident may be critical to a successful investigation or prosecution of a crime. Where the witness in question is a current or former peacekeeper, the Organization will facilitate the giving of testimony by such witness, always subject, as mentioned above, to the Organization's privileges and immunities, any duty of confidentiality that may be owed by the United Nations to third parties and assurances regarding the safety of witnesses or other innocent third parties. When the witnesses involved are current or former peacekeepers, the Organization will coordinate with and seek the cooperation of their respective Governments.

B. Follow-up with host country authorities on the status of national investigations and prosecutions

14. Whenever serious crimes, especially those involving violent attacks or kidnapping, are committed against United Nations peacekeepers, the United Nations reports such incidents to the host Government and requests its assistance in addressing the incidents. In the case of violent attacks, the host Government is requested to conduct the investigation in accordance with its national law and to prosecute the offenders, as appropriate, if they are apprehended. In the case of a kidnapping, the primary concern of the United Nations is to ensure the safety of the victim. Thus, at the outset, the host Government is requested to intercede with the kidnappers so that the victim may be released unharmed and, once the victim has been freed, to investigate the matter with a view to prosecuting the perpetrators.

15. Cooperation with the host country in the investigation of cases and follow-up by the United Nations on the status of such investigations may take place in the field through contacts between the peacekeeping mission and host country authorities

[1] Pursuant to the standard operating procedure on boards of inquiry issued on 1 March 2011 and currently in force, a board of inquiry is mandatory whenever an incident results in the death or serious injury of a member of a peacekeeping operation.

with regard to specific cases, as well as in regular liaison meetings where issues concerning the implementation of the status-of-forces agreement are reviewed. Where necessary, these matters can also be discussed at United Nations Headquarters with the Permanent Mission of the country to which the peacekeeping operation has been deployed and where the attack or other serious crime against peacekeepers occurred.

C. Recent examples of cooperation with host countries with regard to investigations and prosecutions

16. A review of the experience gained in various peacekeeping operations in recent years provides an outline of the main features of the Organization's cooperation with Governments on investigations and prosecutions, as well as the related challenges. Most of the cases on which the United Nations has cooperated with national authorities, in terms both of the investigation and prosecution of the alleged crime, relate to armed attacks against peacekeeping personnel, many of which have resulted in death. It is important to emphasize, however, that the United Nations has no control over such prosecutions, and that, in many cases, the host country authorities have not sought any particular assistance from the United Nations, although they have sometimes informed the peacekeeping operation concerned about the outcome of the trial. The extent to which the United Nations is involved in dealing with crimes committed against peacekeepers may also depend on the mandate of a particular peacekeeping operation and on the capacity of the host country's national institutions responsible for law enforcement and the administration of justice.

17. The United Nations cooperates with Governments on investigations and judicial proceedings related to the prosecution of perpetrators of serious crimes against peacekeepers to the extent that such proceedings comply with international human rights standards, including the right of the accused to be afforded due process.

18. For example, in one mission, some cases involving fatal attacks on United Nations peacekeepers were investigated by the mission's military police, with assistance from the national police authorities. In accordance with its mandate to assist in the professional development and capacity-building of the national police, the mission in question was systematically requested to assist and provide leadership in the investigation of major crimes. In another mission, the United Nations cooperated with the host country authorities to facilitate the giving of testimony by former peacekeepers who had served in that peacekeeping operation, in connection with the prosecution of an individual charged with murder related to the fatal shooting of three of their colleagues in July 2009. The United Nations and the troop-contributing country concerned made arrangements so that two peacekeepers who had been present during the shooting incident and who had subsequently been repatriated upon completion of their tour of duty could return to the host country to give testimony during the trial. The court acquitted the accused on the grounds that he had been improperly identified during an identification parade following his arrest.

19. In another mission, the host country authorities detained three persons allegedly responsible for an attack committed in 2003 that resulted in the death of

two United Nations military observers; those individuals are still awaiting trial. The authorities also arrested and put on trial nine people in connection with an attack committed in 2010 that resulted in the death of three United Nations peacekeepers and injuries to another three. One of the accused was convicted and sentenced to death, three were given life sentences and one was sentenced to 60 months of imprisonment. Four of the accused were released for lack of evidence. Following an attack on United Nations peacekeepers on 4 April 2010 in the same peacekeeping mission, eight suspects were arrested by the host country authorities. Of the eight, three were jailed for life, one escaped and four are currently on trial. The host country has kept the mission informed about the status of the cases. Moreover, since the provision of support to both the armed forces and national police of the host country forms part of the particular mission's mandate in that case, the United Nations has provided assistance to the national authorities in investigating attacks against peacekeepers.

20. In another peacekeeping mission, host country authorities are still investigating an attack that was launched against peacekeepers in June 2007 by elements using an improvised explosive device, in which six peacekeepers died, as well as a similar attack, on 26 July 2011, on the mission's logistics convoy, in which three soldiers were seriously injured. In the same mission, one person was prosecuted by the host country authorities and sentenced to three years in jail for an attack involving an improvised explosive device that injured two peacekeepers on 8 January 2008. The court of that State also tried and sentenced to life imprisonment four other individuals alleged to have taken part in the attack. In all these cases, the mission conducted its own internal investigations and, upon the issuance of a military police report, established boards of inquiry. Since the internal inquiries are not criminal investigations, the host country authorities continue to be responsible for completing the outstanding investigations and prosecuting those responsible, if apprehended.

21. In a different mission, United Nations military police are continuing their investigation into the fatal shooting of a peacekeeper by unknown assailants while he was on sentry duty on 9 April 2011. The military police have been assisted in this investigation by the host country police, who have conducted a forensic examination of the scene of the shooting. The investigation by the mission's military police was preceded by an investigation by a board of inquiry conducted pursuant to the procedures of the troop-contributing country. So far, no suspect has been identified.

22. Another peacekeeping mission has cooperated with national law enforcement and judicial authorities in the investigation of several serious attacks against United Nations police officers: the fatal shooting on 12 April 2008 of a United Nations police officer who was with two colleagues at a local market; the apparent murder on 4 November 2010 of a United Nations police officer at his residence; an armed robbery committed on 14 May 2011 against three United Nations police officers at their residence; and the fatal shooting on 19 August 2011 of one United Nations police officer by armed robbers.

23. In the case of the fatal shooting at a local market, the United Nations arranged for three colleagues of the deceased who had been repatriated from the mission following completion of their assignment to return to the host country to be interviewed by the investigating judge handling the case. Two suspects were arrested and charged with murder and although both escaped one has since been

recaptured and is awaiting trial. The mission has also assisted the investigating judge in reconstituting the file on the case, as the host country's records had been destroyed in a natural disaster. In the case of the United Nations police officer found dead at his residence on 4 November 2010, two suspects have been arrested and charged with murder. With regard to the three police officers who were robbed at gunpoint at their residence on 14 May 2011, the mission filed a complaint with the host country authorities. As a result, the authorities have instituted an investigation, in which the three officers have been questioned by the investigating judge. The police officer who survived the armed attack on 19 August 2011 that led to the death of his colleague with whom he was residing has also provided testimony to the investigating judge.

24. Cooperation between a United Nations peacekeeping operation and the investigative authorities of a State may take place in the field or at United Nations Headquarters, depending on the issues involved and the circumstances of the case. In the field, cooperation related to the investigation and prosecution of cases may involve the peacekeeping operation's civilian security section, military police, civilian police component or the Office of Internal Oversight Services. In interacting with the national authorities, all these units are assisted or advised by the mission's legal office, as appropriate. Cooperation related to prosecutions is coordinated by the mission's legal office and may involve other offices, such as the rule of law or justice sections. In those peacekeeping operations where the local authorities lack the required capacity and where the mission's mandate permits, the mission may also assist in apprehending suspects and transferring them to the relevant authorities.

25. It should be noted that two of the five host States that have conducted investigations and prosecutions of attacks against United Nations peacekeepers pursuant to their national laws have not acceded to the Convention on the Safety of United Nations and Associated Personnel. The other three States are parties to the Convention. All five States have concluded a status-of-forces agreement with the United Nations; four of the five agreements include explicit provisions incorporating paragraphs 9 and 10 of the Convention, which require the criminalization and prosecution of attacks against United Nations and associated personnel.

IV. Outline of the investigative procedures set out in the revised model memorandum of understanding

26. The investigative procedures set out in the revised model memorandum of understanding, which was endorsed by the General Assembly in its resolution 61/267 B, outline and emphasize the responsibility and role of the troop-contributing countries in dealing with acts of misconduct committed by personnel of national military contingents. The procedures foresee only a limited role for the United Nations, which may conduct preliminary fact-finding investigations only to the extent and only for as long as the troop-contributing country has not started its investigation. Insofar as acts of misconduct committed by military contingent personnel may also constitute criminal offences, they are subject to the exclusive jurisdiction of the troop-contributing country in accordance with the relevant status-of-forces agreement (A/45/594, para. 47 (b)) and the revised model memorandum of

understanding. In line with this principle, crimes committed by national military contingent personnel are subject to the investigative authority of the contributing country, as well as to prosecution in accordance with that country's national laws. It is important to recall that these investigation procedures apply only with respect to acts of misconduct committed by members of national military contingents and are not therefore relevant to formed police units, whose members are not subject to the exclusive jurisdiction of the police-contributing country in this regard and are thus liable to prosecution by the host country under its laws should they commit crimes within its territory.[2]

27. To the extent that an act of misconduct or a crime committed by the member of a military contingent has operational, administrative or legal implications for the United Nations, the role of the United Nations, limited as it is, has been defined in the model memorandum of understanding.

28. In this regard, and pursuant to article 7 quater, paragraph 7.12, of the model memorandum of understanding, the United Nations is required, if it has prima facie grounds indicating that any member of the Government's national contingent has committed an act of misconduct or serious misconduct, to inform the Government of such an occurrence. In the case of serious misconduct, the United Nations will take immediate steps to preserve evidence related to the incident and may initiate a preliminary fact-finding inquiry, which may be conducted by the Office of Internal Oversight Services, until the Government commences its own investigation. The preliminary fact-finding inquiry shall include a representative of the Government as part of the investigation team. The United Nations shall provide a complete report of its inquiry to the Government.

29. Pursuant to article 7 quater, paragraph 7.13, of the model memorandum of understanding, the United Nations may also conduct an administrative investigation if, after 10 days of informing the Government about alleged serious misconduct by contingent personnel, the Government has not instituted a national investigation in accordance with the model memorandum of understanding. The team for any such administrative investigation would include a representative of the Government if the Government provides one. The United Nations shall provide the Government with the findings of the investigation, as well as any evidence gathered in the course of said investigation.

30. An increasing number of investigations under the model memorandum of understanding are conducted by the Government providing the peacekeeping personnel, in accordance with the national laws of that Government. Except for a decreasing number of instances in which the United Nations may conduct a preliminary fact-finding or administrative investigation, the role of the United

[2] Pursuant to guidelines issued by the Department of Peacekeeping Operations and the Department of Field Support, the procedures for the investigation of alleged misconduct by civilian police officers and military observers apply also to alleged misconduct by members of formed police units. Accordingly, acts of misconduct by members of formed police units will be subject to a preliminary investigation by the relevant peacekeeping mission and may be subject to the scrutiny of a board of inquiry, as provided in the Directives for Disciplinary Matters involving Civilian Police Officers of 2003 (annex 11 to the Guidelines for Formed Police Units on Assignment with Peace Operations of 2006). Reports of such preliminary investigations and boards of inquiry may be shared with relevant States in appropriate circumstances, including States conducting criminal investigations related to the same subject matter.

Nations is to assist national investigation officers, if necessary, in the conduct of their investigations in terms of the identification and interviewing of witnesses, the recording of witness statements, the collection of documentary and forensic evidence and the provision of administrative as well as logistical assistance. Pursuant to article 7 quater, paragraph 7.19, of the model memorandum of understanding, subject to its national laws and regulations, the Government shall provide the United Nations with the findings of investigations conducted by its competent authorities, including national investigation officers, into possible misconduct or serious misconduct by any member of its contingent.

V. Comparative summary of investigations conducted under the revised model memorandum of understanding of crimes committed against and by peacekeepers

31. The model memorandum of understanding outlines standard terms of agreement between the United Nations and Member States that provide military contingent personnel to United Nations peacekeeping operations. The terms relate to modalities for the investigation of crimes committed by peacekeepers pursuant to the provisions of the model memorandum of understanding. The investigation of crimes committed against peacekeepers is the responsibility of the host Government and is subject to the laws of the host country, as provided in the status-of-forces agreement and pursuant to international law. As noted in the report of the Secretary-General on the prosecution of crimes against deployed peacekeepers (A/65/700, para. 7), due to this distinction, the modalities are adaptable only to the extent that, in both cases, the United Nations will provide information it deems relevant about a given crime arising from any internal investigation or board of inquiry it may have conducted and may also facilitate witness or victim testimony to assist the Member State concerned in fulfilling its obligation to carry out the necessary investigation or prosecution.

32. The United Nations does not have the authority or capacity to conduct criminal investigations in respect of alleged crimes occurring in the host State's territory, whether those crimes are committed by or against peacekeepers. As noted above, the United Nations may only conduct internal investigations for administrative purposes. In the case of misconduct or serious misconduct by its peacekeepers, it may conduct both a preliminary fact-finding inquiry and an administrative investigation, depending on the circumstances. From a criminal law and procedural perspective, such investigations are limited in scope because the United Nations does not have the legal authority to compel witnesses to cooperate in its investigations and there may be obstacles regarding the admissibility of United Nations investigation reports under the criminal procedure laws of Member States. Moreover, with regard to investigations into acts committed by military contingent members, the United Nations may conduct a preliminary fact-finding inquiry or administrative investigation only for as long as and to the extent that the relevant troop-contributing country has not initiated its own investigation.

33. In conducting these procedures, whether pursuant to the revised model memorandum of understanding or standard operating procedures (for example, those related to boards of inquiry), the United Nations takes meticulous care to avoid any interference with or encroachment upon criminal investigations for which national

authorities have responsibility. However, should the United Nations come upon material that might constitute evidence for the purpose of a criminal investigation or prosecution, it will cooperate, as appropriate, with investigators or judicial officials of the State with criminal jurisdiction in the matter.

VI. Conclusion

34. Criminal trials and prosecutions, whether involving crimes committed by or against peacekeepers, are conducted in accordance with the criminal procedure and evidence laws of the State exercising jurisdiction in the case: the laws of the troop-contributing country in respect of crimes committed by United Nations peacekeepers or the laws of the host State in respect of crimes committed against United Nations peacekeepers. The applicable national laws may be significantly different from one country to another.

35. From a practical standpoint, it is difficult to envisage the procedures for the investigation of misconduct and serious misconduct provided in the model memorandum of understanding as a source of rules of general application for criminal investigations across different national jurisdictions. Moreover, since the investigation of misconduct and serious misconduct by peacekeepers on the one hand and of crimes committed against peacekeepers on the other is conducted by different States in accordance with their relevant national laws, it is all the more difficult for the United Nations to propose the procedures set forth in the model memorandum of understanding, with or without adaptations, for general application in the investigation of crimes committed against peacekeepers that are within their respective criminal jurisdictions.